

FILED
COURT OF APPEALS
DIVISION II

2019 JAN -2 PM 1:02

STATE OF WASHINGTON

BY HS
DEPUTY

In The Court Of Appeals Of The State Of Washington
Division Two

In re the Personal Restraint)	
Petition Of:)	No. _____
)	
Marcus Reed,)	Personal Restraint Petition
)	
Petitioner Pro Se.)	(Pursuant to RAP 16.4)
)	
)	

A. Status of Petitioner

Marcus Reed, Petitioner Pro Se, is currently confined at the:

Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

under the authority of Pierce County Cause Number 13-1-01442-6 and is applying for relief from confinement.

1. The Court in which Reed was sentenced was the Pierce County Superior Court.

2. Reed was convicted of murder in the first degree, two counts of assault in the second degree, and one count of burglary in the first degree. All counts included firearm enhancements. Appendix A - Judgment and Sentence

3. Reed was sentenced following a jury trial to a term of life without the possibility of parole as a persistent offender. Sentencing took place before the Honorable Schartz, Judge. Appendix A

4. Reed's lawyer at trial was Sunny Ko and her address is as follows:

1105 Tacoma Ave. S.
Tacoma, WA 98402

Reed's current Personal Restraint Petition is not frivolous, as he presents an arguable basis in both law and fact in relation to each of his claims.

A Personal Restraint Petition, in addition to demonstrating error, must also show that said error, if constitutional, "actually and substantially prejudiced" them in their case. In *re Pers. Restraint of Coats*, 173 Wn.2d 123, 132, 267 P.3d 324 (2011). If the error is not of a constitutional magnitude, the Personal Restraint Petition must show the error represents a "fundamental defect ... that inherently resulted in a complete miscarriage of justice." In *re Pers. Restraint of Finstad*, 177 Wn.2d 501, 506, 301 P.3d 450 (2013).

C. Grounds For Relief

Reed claims there are two reasons for this court to grant him relief from his convictions and/or sentence as described in Part A of this petition.

1. The trial court erred in allowing the victim's mother to use an extremely powerful listening device throughout the entirety of Reed's trial; thus, intruding upon Reed's constitutionally protected right to privately confer with his attorney during trial.

The State's intrusion into the confidential communications between a defendant and their defense counsel violates the defendant's right to counsel and due process. This is because it allows the state an unfair advantage at trial by, as declared by Reed in his attached declaration, destroying any confidence he had in his counsel's ability to represent him.

Appendix B - Declaration of Reed

The right to counsel is protected by the Washington State Constitution and by the Fifth and Sixth Amendments of the United States Constitution. *State v. Cory*, 62 Wn.2d 371, 373, 382 P.2d 1019 (1963).

A defendant cannot receive effective assistance of counsel without the right to confer with defense counsel in private. *Id.* at 373-74. "Effective

representation requires that a criminal defendant be permitted to confer in private with his or her attorney." *State v. Garza*, 99 Wn.App. 291, 994 P.2d 868 (2000) [Emphasis Added], (citing *State v. Cory*, 62 Wn.2d at 373-74). "Intrusion into private attorney-client communications violates a defendant's right to effective representation and due process." *Id.* "Even 'high motives and zeal for law enforcement cannot justify spying upon and intrusion into the relationship between a person accused of a crime and his counsel.'" *Id.*

The Fifth and Sixth Amendments "unqualifiedly guard the right to assistance of counsel, without making the vindication of the right depend upon whether its denial resulted in demonstratable prejudice." *Cory*, 62 Wn.2d at 376 (quoting *Coplon v. United States*, 191 F.2d 749, 759 (1951)). The violation of a constitutional right is presumed to be prejudicial. Thus, once a Petitioner demonstrates an intrusion has occurred, the burden shifts to the State to show the absence of prejudice beyond a reasonable doubt. *State v. Guloy*, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985).

The purpose of the attorney client privilege is inextricably linked to the very integrity and accuracy of the fact-finding process itself. *United States v. Levy*, 577 F.2d 200, 209 (3rd Cir.1978).

A number of cases have resulted in dismissal as a result of State interference with the right to counsel. In *State v. Granacki*, 90 Wn.App. 598, 959 P.2d 667 (1998), a detective briefly glanced at defense counsel's notes during a break in trial. The State argued that dismissal was appropriate only if the defense could show that the defendant's right to a fair trial was prejudiced. The Court of Appeals rejected the State's argument. Instead, the Court held that the remedy for the State's interference with the defendant's right to counsel was dismissal. The basis

of the court's holding was grounded in the fact that "[] there is no meaningful way to isolate the prejudice resulting from such interference even if a new trial is granted." The court further observed, the "right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial." *Granacki*, 90 Wn.App. at 603.

In *State v. Cory*, 62 Wash.2d 371, 382 P.2d 1019 (1963), law enforcement officers eavesdropped on, and made two tape recordings of, confidential conversations between a defendant and his attorney through the use of a microphone installed in a county jail conference room. *Cory*, 62 Wn.2d at 372. The trial court refused to grant the subsequent motion to dismiss, but indicated that it would exclude any evidence derived through the eavesdropping on a motion of the defendant. *Id.* The Washington Supreme Court reversed and dismissed the charges because it was impossible for the state to demonstrate the absence of prejudice." *Cory*, 62 Wn.2d at 372 See also *State v. Burri*, 87 Wash.2d 175, 183, 550 P.2d 507 (1976); *State v. Grant*, 9 Wash.App. 260, 266-67, 511 P.2d 1013, review denied, 83 Wn.2d 1003 (1973), cert. denied, 419 U.S. 849 (1974).

More recently, the court has again made it clear that an intrusion into the right to counsel is per se prejudicial:

Because we believe that a prosecutor's intentional intrusion into the attorney-client relationship constitutes a direct interference with the Sixth Amendment right of a defendant, and because a fair adversary proceeding is a fundamental right secured by the Sixth and Fourteenth Amendments, we believe that absent a countervailing state interest, such an intrusion must constitute a per se violation of the Sixth Amendment. In other words, we hold that when the state becomes privy to confidential communications because of its purposeful intrusion into the attorney-client relationship and lacks a legitimate justification for doing so, a prejudicial effect on the reliability of the trial process must be presumed. In adopting this rule, we conclude that no other standard can adequately deter this sort of misconduct. We also note that "[p]rejudice in these circumstances is so likely that case-by-case inquiry into prejudice is not worth the cost." [*Strickland v. Washington*, 466 U.S. 668, 692, 104 S.Ct. 2052, 2067, 80 L.Ed.2d 674

(1984].

Our holding subsumes the state's argument that harmless error analysis should apply to this sort of Sixth Amendment violation because our *per se* rule recognized that such intentional and groundless prosecutorial intrusions are never harmless because they "necessarily render a trial fundamentally unfair." *Rose v. Clark*, 478 U.S. 570, 577, 106 S.Ct. 3101, 3105, 92 L.Ed.2d 460 (1986).

State v. Garza, 99 Wn.App. 291, 299-300, 994 P.2d 868 (2000), (citing *Shillinger v. Hawarth*, 70 F.3d 1132, 1142 (10th Cir.1995)).

Garza involved the search of a jail pod in the wake of an escape attempt. It is notable that in Garza there was no question that the search was justified:

Certainly the escape justified the search, but the precise question is whether the security concerns justified such an extensive intrusion into the defendant's private attorney-client communications.

Id. at 301.

Here, as in Granacki, Cory, and Garza, allowing the victim's mother, Ms. Phily to use an extremely high powered listening device throughout Reed's trial, undoubtably interfered with Reed's right to counsel. Appendix C - Transcript The intrusion in this matter was not only deliberate, but egregious based upon Ms. Phily's repeated courtroom disruptions. Inevitably, when these disruptions occurred, whether caused by dropping the hearing device or making other, but similarly obvious noises, the prosecution would suddenly request a recess to 'check on' the well-being of Ms. Phily. Most troubling was these wellness checks, for a lack of a better term, would often take place privately outside the courtroom. Please see Appendix(s) B, D, E, F and G

Contained within Appendixes F and G we find two examples of where the state suddenly and seemingly without reason asked for a five minute recess. While seeing this in the record, in and of itself, would not raise concern.

What does raise concern is the fact each of these instances were prompted by Ms. Phily first making some type of noise to get the state's attention and both times resulted in secretive conversations, between Ms. Phily and the State, out in the hallway. Then in Appendix E, we see the judge verbally reprimanding a gentleman sitting next to Ms. Phily for, what could only be described as an attempt to influence another's testimony, i.e., witness tampering. It is not a stretch of one's imagination to surmise Ms. Phily had shared something she had overheard with him and he felt it necessary to attempt to alter a witnesses' personal testimony. Lastly, in Appendix D we find the court actually directing the state to check with Ms. Phily due to one of her courtroom disruptions. There could not have been a more obvious intrusion into Reed's case.

Of course, during trial, the state claimed these private conversations were done solely to check on Ms. Phily. However, had that truly been the reason, there is no reason why the court did not take on this task. Ms. Phily had already testified and was released by the state, which is the only reason she was allowed in the courtroom. As such, the state had no further obligation to Ms. Phily.

However the coin lands, it cannot be disputed that the actions of Ms. Phily and the state, as licensed by the trial court, gave the appearance of a ploy that immensely frustrated Reed's ability to freely and privately communicate with counsel during a trial where his very life was on the line.

The effect of these events, whether intentional or not, stripped Reed of any confidence in his attorney. Rather than paying attention to the testimony of the various witnesses or to counsel's line of questioning, Reed was forced to focus on Ms. Phily and her interactions with the state.

Appendix B

Even when thoughts would arise, Reed had no confidence in his ability to privately share those thoughts with counsel, which only added to the frustration of his right to confer with counsel. Appendix B Moreover, the court's instruction to Reed and his attorney to utilize pen and paper to communicate did nothing to remedy the intrusion. Appendix C - Transcript As this court knows, trials move along very quickly. This is especially true for a layman with no legal training or experience with trials. As such, it was all but impossible for Reed to write down his thoughts for counsel's consideration during trial, while keeping up with everything else going on.

A criminal trial where a defendant is not free to privately communicate with their attorney simply cannot be construed as fair and is per se prejudicial. *State v. Garza*, 99 Wn.App. 291, 299-300, 994 P.2d 868 (2000).

Importantly, even if prejudice were not presumed, it is easily established under the holdings of *Garza*. Therein, the court held prejudice may be established by demonstrating (1) that the evidence gained through the intrusion will be used against them at trial; (2) that the prosecution is using confidential information pertaining to defense strategies; (3) that the intrusions have destroyed their confidence in their attorney's; or (4) that the intrusion will otherwise give the state an unfair advantage at trial. *State v. Garza*, 99 Wn.App. 291, 300-01, 994 P.2d 868 (2000).

Based on the foregoing, it is clear Reed's ability to privately confer with counsel was improperly intruded upon. It is also clear Ms. Phily was sharing what she was able to glean, not only with the State's attorney, but also with the gentleman sitting with her in the gallery; the same gentleman caught by the court attempting to influence the testimony of a witness in this case. If this type of egregious conduct did not give the state an

unfair advantage at trial, that standard could never be met. The proper remedy is reversal; however, in the spirit of fairness, in the alternative, in accordance with the holding of *State v. Fuentes*, 179 Wn.2d 808 (2014), *In re Amos*, 1 Wash.App.2d 578, 406 P.3d 707 (2018), and *State v. Irby*, 3 Wash.App.2d 247, 415 P.3d 611 (2018), Reed requests an evidentiary hearing where discovery tools may be properly utilized by the State to allow them an opportunity to meet their burden to prove the intrusion in this case was not prejudicial beyond a reasonable doubt. *Fuentes*, 179 Wn.2d at 820 (2014) (Holding: "there are only rare circumstances where there is no possibility of prejudice to the defendant.")

2. The trial court erred by counting Reed's second degree robbery conviction as a strike under the PDAA because the conviction occurred when he was 18 years old and the Eighth Amendment requires youthful offenders to be treated differently. Therefore, the mandatory requirements of determining (1) a most serious offense as a "strike"; and (2) an individual as a persistent offender, should no longer apply under these circumstances.

A. Reed was a youthful offender when his first strike offense occurred, and he should be treated differently.

This issue raises a novel question for the Court:

Does the Eighth Amendment's requirement to treat youthful offenders differently prevent the court from imposing a mandatory life without parole sentence under a recidivism statute that is predicated upon prior convictions committed when the defendant was considered a youthful offender?

The answer should be YES!

This is because youthful offenders must be treated differently. In 1993, the Legislature enacted the Persistent Offender Accountability Act (PDAA). The PDAA defines "most serious offenses" for the purposes of the persistent offender sentencing statute, RCW 9.94A.570, which requires a persistent offender to be sentenced to a mandatory term of total confinement for life

without the possibility of release. Furthermore, the process for finding a persistent offender is an individual who (1) has been convicted in Washington "of any felony considered a most serious offense" and (2) has "been convicted as an offender on at least two separate occasions" in any state for offenses that, in accordance with Washington law, "would be considered most serious offenses." RCW 9.94A.030(38)(a).

Under these mandatory requirements of the POAA, it is the state who bears the ultimate burden of proving, by a preponderance of the evidence, that prior convictions for most serious offenses exist, and whether the defendant is the subject of those convictions. *State v. Thorne*, 129 Wn.2d 736, 783, 921 P.2d 514 (1996).

These mandatory principles have all been eroded - and ultimately eradicated - over the last decade. Paying heed to contemporary research regarding child psychology and brain development, the United States Supreme Court and the Washington Supreme Court have issued several momentous decisions regarding the sentencing of juveniles and youthful offenders. Furthermore, these decision now question whether the POAA is unconstitutionally applied in certain cases where a life without parole sentence is predicated upon prior convictions that were committed as a youthful offender.

In 2005, the United States Supreme Court held the death penalty unconstitutional for juvenile offenders in *Roper v. Simmons*, 543 U.S. 551 (2005). The *Roper* Court relied on research indicating that juveniles are different from adults because of their immaturity, susceptibility to outside pressures, and unformed character. *Id.* at 569-70. These differences mean that the two justifications for the death penalty, retribution and deterrence,

apply with less force to a juvenile than to an adult. *Id.* 571-72. Accordingly, the Court held that imposing the death penalty on a juvenile is disproportionate and constitutes cruel and unusual punishment. *Id.* at 578.

In 2010, the United States Supreme Court considered life without parole for juveniles convicted of non-homicide crimes in *Graham v. Florida*, 560 U.S. 48 (2010). Relying heavily upon *Roper*, the *Graham* Court noted that "developments in psychology and brain science continue to show fundamental differences between juveniles and adult minds." *Id.* at 68. In particular, a juvenile is more capable of change than an adult. The *Graham* Court held that, while a juvenile offender will never be fit to reenter society. *Id.* at 75. States must provide "'some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" *Id.*

Next, in 2012, the United States Supreme Court considered mandatory sentencing schemes as applied to juveniles in *Miller v. Alabama*, 132 S.Ct. 2455 (2012). In *Miller*, a juvenile offender convicted of capital murder faced sentencing schemes in which the trial court has no discretion to consider the defendants' age and maturity, the specific circumstances of the crime, or the possibility of rehabilitation. *Id.* at 2455-58. Relying on *Graham* and *Roper*, the *Miller* Court concluded that such a sentencing scheme violates the Eighth Amendment's prohibition against cruel and unusual punishments. Thus, the Court stated that the sentencing court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 2469. (Footnote omitted).

The Washington Supreme Court acted in response to this triad of cases. In 2015, the Court considered age as a mitigating factor in *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015). In that case, an 18-year-old defendant

was convicted of second-degree rape of a child. *Id.* at 685. The defendant requested an exceptional sentence based on his age and immaturity. *Id.* 695. The sentencing court determined that it could not consider the defendant's age as a mitigating factor and imposed a standard range sentence. *Id.* 686. Relying on the same scientific developments that animated the United States Supreme Court, the Court overturned the defendant's sentence and remanded for resentencing. *Id.* at 699.

The O'Dell Court noted that, prior to the *Miller* line of cases, Courts did not have the benefit of studies proving that there are fundamental differences between juveniles and adult brains. *Id.* at 691-92. As an example of the law's previous faulty understanding, the O'Dell Court quoted this Court's opinion in *State v. Scott*, 72 Wn.App. 207 (1993). *Id.* at 694-95. According to the O'Dell Court, the decision in *Scott* reflected the reasoning that youth could not mitigate culpability. *Id.* at 695, 358 P.3d 359. Because that reasoning has been disproven by the scientific studies underlying the *Miller* line of cases, the O'Dell Court held that "a trial court must be allowed to consider youth as a mitigating factor." *Id.* 696.

A few months after O'Dell, the Washington Court of Appeals concluded that *Miller* applied to "de-facto life sentences." *State v. Ronquillo*, 190 Wn.App. 765, 768-69 (2015). There, a juvenile was convicted of "murder and other violent crimes the offender committed in a gang-motivated drive-by shooting when he was 16 years old." *Id.* at 769. At sentencing, the juvenile argued for an exceptional sentence downward based on *Miller* and based on the excessive nature of the aggregate sentence. *Id.* at 773. The sentencing court found that *Miller* did not apply because the sentence at issue was not mandatory life without parole. *Id.* at 773-74. The sentencing court also

concluded that age could not be considered as a basis for finding the aggregate sentence excessive. *Id.* The Court imposed the bottom of the standard range sentence for each count, resulting in a sentence of 621 months (51.3 years) to be served consecutively. *Id.* at 769-70. This sentence would keep Ronquillo in prison until he was 68 years old. *Id.* at 775.

On appeal, the Court relied on *O'Dell* to hold that the trial court erred in concluding that it could not consider age as a basis for an exceptional sentence. *Id.* 783. The Court also held that Ronquillo's aggregate sentence was a de-facto life without parole sentence to which *Miller* applied. *Id.* at 774-75. As the Ronquillo Court held:

Before imposing a term-of-years sentence that is the functional equivalent of a life sentence for crimes committed when the offender was a juvenile, the court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."

Id. at 775 (quoting *Miller*, 132 S.Ct. at 2469). In so doing, the Ronquillo Court adopted the rationale of the Iowa Supreme Court:

The court did not regard the juvenile's "potential future release in his or her late sixties after a half century of incarceration" sufficient to escape the rationales of *Graham* or *Miller*. The Court concluded that "*Miller's* principles are fully applicable to a lengthy term-of-years sentence" where the juvenile offender would otherwise face "the prospect of geriatric release." ... It assesses Ronquillo as virtually irredeemable. This is inconsistent with the teachings of *Miller* and its predecessors.

Id. at 775 (quoting *State v. Null*, 836 N.W.2d 41 71-75 (Iowa, 2013)). Ronquillo's case was remanded for a new sentencing hearing. *Id.* at 783-85.

Thereafter, in *Montgomery v. Louisiana*, ___ U.S. ___, 136 S.Ct. 718. 736. 193 L.Ed.2d 599 (2016), the United States Supreme Court considered whether the decision in *Miller* applied retroactively. The Court summarized *Miller* by stating that "life without parole is excessive for all but 'the

rare juvenile offender whose crime reflects irreparable corruption.'" Id. at 734 (quoting *Miller*, 132 S.Ct. at 2469). Accordingly, a sentence of life without parole is an unconstitutional penalty for "'juvenile offenders whose crimes reflect the transient immaturity of youth.'" Id. (quoting *Penry v. Lynaugh*, 492 U.S. 302, 305 (1989) abrogated by *Atkins v. Virginia*, 536 U.S. 304 (2002)). The Court concluded that as a result, *Miller* announced a substantive rule of constitutional law that applies retroactively. Id.

Even more recently, the Washington Supreme Court addressed *Miller*'s applicability to a group of defendants not explicitly covered in that ruling: juvenile defendants who had received lengthy mandatory sentences that were attributable to firearm sentencing enhancements and lacked the possibility of early release. *State v. Houston-Sconiers*, 188 Wn.2d 1, 22 (2017). Although the United States Supreme Court had yet to extend *Miller* to the situation involving sentences for robberies, the *Houston-Sconiers* Court held that the Eighth Amendment and *Miller* required that "sentencing courts must have absolute discretion to depart as far as they want below otherwise applicable [SRA] ranges and/or sentencing enhancements when sentencing juveniles in adult court, regardless of how the juvenile got there." Id. at 9.

An examination of these cases illustrates that the Washington Supreme Court has applied *Miller*'s reasoning beyond its holding. As noted by the Iowa Supreme Court in *State v. Sweet*, 879 N.W.2d 811 (Iowa 2016), the Washington Courts have applied these key principles in a variety of contexts and circumstances. See generally *State v. Soliz-Diaz*, 194 Wn.App. 129, 139-41 (2016) (sentencing court must consider whether youth diminishes culpability).

The Washington Supreme Court confirmed this assessment and again extended *Miller* to a new group of youth in the very recent case of *State v.*

Bassett, ___ Wn.2d ___, 2018 WL 5077710 (October 18, 2018). There, the Court invalidated Washington's so called "Miller-fix" and held that sentencing juveniles to life without parole or early release constitutes cruel punishment under Article I, Section 14 of the Washington Constitution. As the Bassett Court explained:

We look to whether the penological goals of retribution, deterrence, incapacitation, and rehabilitation are served by this sentence. "[T]he distinctive attributes of youth diminish the penological justification for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." Ramos, 187 Wn.2d at 438 (quoting Miller, 567 U.S. at 472). First, the case for retribution is weakened for children because "[t]he heart of the retribution rationale" relates to an offender's blameworthiness" and children have diminished culpability. Miller, 567 U.S. at 472 (alteration in original) (internal quotation marks omitted) (quoting Graham, 560 U.S. at 71-74). "Nor can deterrence do the work in this context, because 'the same characteristics that render juveniles less culpable than adults' - their immaturity, recklessness, and impetuosity - make them less likely to consider potential punishment." Id. (internal quotation marks omitted) (quoting Graham, 560 U.S. at 72). Rehabilitation is not supported by a juvenile life without parole sentence because the sentence "'forswears altogether the rehabilitative ideal.'" Id. at 473 (quoting Graham, 560 U.S. at 74).

Bassett, 2018 WL 5077710, at 8

As the prior cases show, the science and jurisprudence related to the development and culpability of youthful offenders has not been static. This continues to be the case.

In September, 2017, Judge Ernesto Scorsone declared Kentucky's death penalty statute unconstitutional "insofar as it permits capital punishment for those under twenty-one (21) years of age at the time of their offense." Commonwealth v. Efrain Diaz, Case No. 15-CR-584-001 (September 6, 2017). Judge Scorsone's ruling tracks the evidence provided by Dr. Laurence Stienberg. Judge Scorsone explained:

while the development of the prefrontal cortex (logical reasoning, planning, personality) is largely finished by the late teens, the maturity of connections between the prefrontal cortex and regions which

govern self-regulation and emotion continues into the mid-twenties (20s). This supports the psychological findings spelled out above which conclude that even intellectual young adults may have trouble controlling impulses and emotions, especially in the presence of peers and in emotionally arousing situations.

Perhaps one of the most germane studies to this opinion illustrated this development gap by asking teenagers, young adults (18-21), and mid-twenties adults to demonstrate impulse control under both emotionally neutral and emotional arousing conditions. Under emotionally neutral conditions, individuals between eighteen (18) and twenty-one (21) were able to control their impulses just as well as those in their mid-twenties (20s). However, under emotionally arousing conditions, eighteen (18) to twenty-one (21) year-olds demonstrated levels of impulsive behavior and patterns of brain activity comparable to those in their mid-teens. Put simply, under feelings of stress, anger, fear, threat, etc., the brain of a twenty (20) year-old functions similarly to a sixteen (16) or seventeen (17) year-old.

Also meaningful to Judge Scorsone, was Dr. Steinberg's evidence regarding the heightened neuroplasticity - the ability to change in response to experience - of juvenile brains:

One of the periods of the most marked neuroplasticity is during an individual's late teens and early twenties (20s), indicating that this group has strong potential for behavior change. Given adolescents' ongoing development and heightened plasticity, it is difficult to predict future criminality or delinquent behavior from antisocial behavior during the teen years, even among teenagers accused of committing violent crimes. In fact, many researchers have conducted studies finding that approximately ninety (90) percent of serious juvenile offenders age out of crime and do not continue criminal behavior into adulthood.

Dr. Steinberg's expertise was also persuasive to the United States District Court in Connecticut, when it similarly held that *Miller* forbids sentencing schemes that mandate sentences of life in prison without the possibility of parole for 18-year-olds. *United States v. Cruz*, 11-CV-787 (JCH) (March 29, 2018), United States District Court for the District of Connecticut. Before reaching this conclusion, the *Cruz* Court determined, in accordance with our Washington Supreme Court, that Courts are not prohibited from extending *Miller* to different facts. The *Cruz* Court considered evidence

of societal trends offered by both parties and determined that

While there is no doubt that some important societal lines remain at age 18, the changes discussed above reflect an emerging trend toward recognizing that 18-year-olds should be treated different from fully mature adults.

The Cruz Court's conclusions about adolescent development echoed those described by Judge Scorsone. In addition, Cruz noted that adolescents age 17-years-old to 19-years-old can be, normatively, particularly vulnerable, as "risk-seeking behavior peaks around ages 17 to 19 and then declines into adulthood. Finally, when asked whether he could state with a reasonable degree of scientific certainty that the findings that underpinned his conclusions as to the defendants in Graham and Miller, who were under the age of 18, also applied to an 18-year-old, Dr. Steinberg answered that he was "absolutely certain."

Simply put, youthful offenders are unique. Therefore, they must be treated differently up until at least the age of 21 years old. The mandatory strike requirements for most serious offenses, and the mandatory persistent offender status determination of the POAA, should no longer apply in circumstances where the necessary predicate offenses, i.e., prior convictions, were committed as a youthful offender before the age of 21. This conclusion is based upon the above line of illustrative cases and their findings underpinning the brain development of children during the stages of adolescences.

In addition to recognizing that youthful offenders must be treated differently, this Court should realize that the penological goals of retribution, deterrence, incapacitation, and rehabilitation are not served when life without the possibility of parole sentences are imposed under the

POAA, when predicated upon prior convictions committed by youthful offenders before the age of 21. Often, youthful offenders will plead guilty to a most serious offense just to get out of jail, without fully understanding the consequences of the conviction counting as a strike in future sentencing proceedings. This is related to the youthful offender's underdeveloped prefrontal cortex which governs logical reasoning, planning for the future, and personality.

Here, Reed pled guilty to his first most serious offense (1st Degree Robbery) at age 18. He received 4^{1/2} months plus a day. See Appendix H (1997 J&S/Guilty Plea Statement). The growing controversy over whether Second Degree Robbery should be even considered as a most serious offense and therefore count as a strike, is further evidence that it should not apply under these circumstances. Then, at age 21, Reed pled guilty to his second most serious offense (Second Degree Robbery). He received 29 months. See Exhibit I (2009 J&S/Guilty Plea Statement).

At these ages, Reed's underdeveloped brain prevented him from understanding the strike consequences of these most serious offenses. Furthermore, his immaturity, recklessness, and impetuosity made him less culpable for the crimes when they occurred. Without either of these prior convictions, the sentencing court would have never been authorized to sentence Reed to life without parole under the POAA. So, the very foundation of Reed's current life without the possibility of parole sentence is unconstitutional as applied because it evidences the underpinnings of brain development in youthful offenders, which is a social trend that is currently being used to form our ever evolving sentencing jurisprudence.

One of the greatest legal minds that Washington State has to offer

recently recognized that the issue presented herein is "the next step in the evolution of our law governing punishment of those with psychological traits of juveniles at the time of the offense." See Dissent by: Thomas Bjorgen, C.J., *State v. Moretti*, ___ Wn.App. ___ (2017). The Honorable Chief Justice Bjorgen recognized that, while the POAA sentence was imposed at a later age, well beyond the youthfulness stages, the sentence was equally based upon all three strike convictions and not solely on the third strike conviction.

The Washington Court of Appeals, Division Three, differed on this issue in *State v. Orr*, No. 34729-0-III (April 26, 2018) (Unpublished). The Orr Court refused to consider his youth at the time of his first two strike convictions because he was not a youthful offender at age 41 when he committed his third strike and was sentenced to life without parole under the POAA.

This Court should recognize the evolution of youthful sentencing and find that the mandatory provisions of the POAA are unconstitutional as applied in circumstances when a life without parole sentence is predicated upon prior convictions committed at any time during the stages of youthfulness, i.e., before the age of 18; and between the ages of 18 and 21.

B. The prior conviction exception allows for a sentencing court to consider Reed's youthfulness, including age and its hallmark features, during a persistent offender sentencing hearing.

This issue raises another novel question for the Court:

If the prior offense exception allows a sentencing court to consider a defendant's age and youthfulness, is the sentencing court required to apply the Eighth Amendment protections before classifying a prior conviction as a strike for POAA sentencing purposes?

The answer should be YES!

The is because the United States Supreme Court in *Apprendi v. New*

Jersey, 530 U.S. 466 (2000), created the "prior conviction" exception in order to avoid the jury requirement that requires a jury to find any fact the increases a sentence beyond the standard range beyond a reasonable doubt. In order to give effect to the prior offense exception, Washington Courts have held that sentencing court's must be allowed, as a matter of law, to determine not only the fact of the prior conviction, but also those facts "intimately related to [the] prior conviction. *State v. Brinkley*, 192 Wn.App. 456 (2016) (quoting *State v. Jones*, 159 Wn.2d 231, 241 (2006)).

The facts that are intimately related to the prior conviction are facts such as the dates of the conviction, offense dates, and the underlying offense. *Id.* at 241. Furthermore, a defendant's age and the timing, degree, number, and sequence of the prior convictions are also considered intimately related. *People v. Rivera*, 362 Ill.App.3d 815, 841, N.E.2d 532 (2005).

In light of the Eighth Amendment's requirement to treat youthful offenders differently, the sentencing courts should recognize their ability to consider an offender's age and youthfulness at the time of their prior conviction before using such a prior conviction as the necessary predicate for imposing a life without parole sentence. These considerations may include "hallmark features" such as immaturity, impetuosity, failure to appreciate consequences, surrounding environment, family circumstances, participation in the crime, the way familial and peer pressure may have affected the defendant, and how youth impacted a legal defense, along with any factor suggesting that the youth might be successfully rehabilitated. *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

Here, none of these features were considered by the sentencing court during Reed's persistent offender hearing. This is because the court failed

to recognize their authority under the "prior conviction" exception and the Eighth Amendment. In circumstances such as those presented in this case, sentencing court's must recognize their ability to consider an offender's youthfulness (including age and its "hallmark features") before classifying a prior conviction as a strike and sentencing someone to life without parole under the PDAA.

SUBCONCLUSION FOR SECTIONS A AND B

In conclusion of sections A and B of this petition, the holdings in *Miller* and *Houston-Sconiers* should apply equally to (1) an offender over the age of 18, and (2) to a prior conviction before it is used as a necessary predicate to enhance a future sentence to life without parole, regardless of the age of the defendant at the time the life without parole sentence is imposed. This is because the current life without parole sentence would not be authorized by law without the necessary predicate conviction that occurred when the defendant was considered a youthful offender. Before such a prior conviction can be used to impose the harshest sentence allowed by law, the Eighth Amendment protections must be considered as required by *Miller* and *Houston-Sconiers*.

Lastly, the Court should continue to apply these holdings to every set of circumstance in which youth plays a vital role in the imposition of a life without the possibility of parole sentence, such as is the situation in this case. *Houston-Sconiers'* holding should also apply to the mandatory strike requirements for prior convictions that where committed as a youthful offender.

For these reasons, Reed's current life without parole sentence is unconstitutional as applied because he must be treated differently and the

mandatory strike requirements should no longer apply to his prior convictions that occurred at age 18.

C. The state failed to meet their burden under the POAA because they failed to present any evidence proving that Reed "has been convicted" of a current most serious offense, or atleast two separate convictions.

This issue raises a third novel question for the Court:

Does the term "has been convicted" require the state to provide the sentencing court with sufficient evidence that meets the prerequisites of a conviction as defined by RCW 9.94A.030(9)?

The answer should be YES!

This is because the term conviction has been defined to mean "an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty." RCW 9.94A.030(9). Here, the state never provided sufficient evidence, like a jury verdict finding Reed guilty of his current conviction, or a guilty plea showing that he pled guilty to his two previous strike offenses. The state only submitted two judgment and sentences that simply reflect that he pled guilty to the two subsequent convictions. These judgment and sentences do not meet the POAA's requirement of proving that Reed "has been convicted".

The simple meaning of "has been convicted" cannot be watered down by the state in their quest to prove a defendant's persistent offender status. Importantly, the Court should recognize that the phrase "prior conviction" which is all the judgment and sentence proves under the SRA, is not synonymous with the POAA's phrase "has been convicted". Proving that a defendant "has been convicted" places a harsher burden upon the state than the SRA's burden of proving a prior conviction. The Washington Supreme Court's Justice Sharyol Gorden McCloud recognized the differences in these two phrases in *State v. Case*, 187 Wn.2d 85 (2016) (dissenting opinion).

So, because the state failed to present (1) the jury verdict showing that Reed "has been convicted" of First Degree Murder, and (2) the guilty pleas showing that Reed "has been convicted" by pleading guilty to two previous crimes for First and Second Degree Robbery, respectively, it cannot be held that the state never met its burden under the POAA. Therefore, his current life without parole sentence is unlawful as the Court had no authority to impose such a sentence based upon the evidence presented by the state, which only amounts to bare assertions at this point. It is "inconsistent with the principles underlying our system of justice to sentence a person on the basis of crimes that the state either could not prove or chose not to prove." *In re Williams*, 111 Wn.2d 353, 357, 759 P.2d 436 (1988) ("To uphold procedurally defective sentencing hearings would send the wrong message to trial court's, criminal defendants, and the public.")

For these reasons, Reed's current POAA sentence is procedurally defective because the state chose not to properly prove either his current First Degree Murder conviction or his two previous Robbery convictions. The term "has been convicted" must be given its plain ordinary meaning in order to place the intended burden upon the state under the POAA. The requirement to prove the existence of current and/or prior convictions under the POAA and the SRA are not synonymous with each other. The differences in sentencing procedures between the POAA and the SRA were put on display in *State v. Inocencio*, 187 Wn.App. 765 (2015), and should be followed accordingly.

D. Statement of Finances

1. I do ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.
2. I have a spendable balance of \$ 0 in my prison or institutional account.
3. I do ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer.
4. I am NA am not X employed. If so, my employer is NA and my monthly wages amount to approximately 0.
5. During the past twelve months, I did not get any money from a business, profession or other form of self-employment.
6. During the past 12 months, I did not get any rent payments, interest, dividends, other money or have any cash other than that said in answer 2. Further, I do not have any savings or checking accounts, nor do I own, nor possess any stocks, bonds, or notes.
7. I do not own any real estate, nor any other property of value.
8. I am not married.
9. There are no persons dependent upon me for support.
10. The only bills I owe are those related to legal financial obligations.

E. Relief Requested

Reed requests this court to dismiss the judgment as a result of the impermissible intrusion into his ability to communicate with counsel throughout the entire course of his criminal trial; or, in the alternative, should this court find it difficult to meet the merits of this claim, an evidentiary hearing is requested.

Reed further requests this matter be remanded back to the sentencing court for vacation of his PDAA sentence, so a proper SRA standard range sentence can be imposed.

FILED
COURT OF APPEALS
DIVISION II
2019 JAN -2 PM 1:02
STATE OF WASHINGTON
DEPUTY
BY

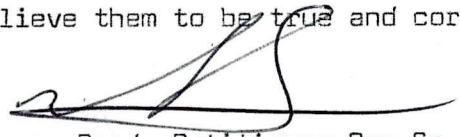
F. Oath of Petitioner

The State of Washington

ss

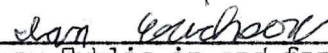
County of Clallam

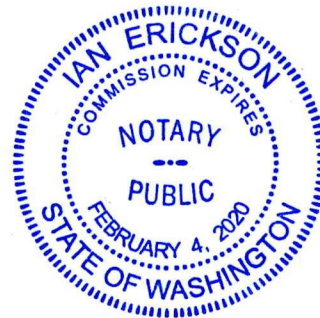
After being first duly sworn, on oath, I do depose and say: That I am the Petitioner, that I have read this petition, know its contents, and believe them to be true and correct to the best of my knowledge and belief.


Marcus Reed, Petitioner Pro Se
D.O.C. 302826 / CH02
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

Jurat

Subscribed and Sworn to Before Me, a Notary Public, on this 30 day of December, 2018.


Notary Public in and for the State
of Washington, ~~Spokane~~^{at} County
Clallam



Appendix A

Appendix B

In The Court Of Appeals Of The State Of Washington
Division Two

In re the Personal Restraint)
Petition Of:)

No. _____

Marcus Reed,

Declaration In Support

Petitioner Pro Se.

I, Marcus Reed, am the Petitioner identified in the attached Personal Restraint Petition. I am of the age of majority and am competent to make the following statements. This Declaration is made in good faith and contains an accurate and factual summary of events which took place during my trial.

1. On October 15, 2015, during trial, the judge placed on the record the fact that the victim's mother, Ms. Phily was using an extremely powerful listening device, which was capable of picking up the private communications between myself and my attorney. This was even the case when conversations were held at a whisper.

2. After this matter was brought to light, I lost all confidence in my counsel's ability to represent me because I feared the State had gained an unfair advantage in that I was not able to freely communicate my thoughts and impressions of witness testimony or other evidence with my attorney.

3. Many times I was forced to keep my thoughts and impressions about certain evidence and testimony to myself because I was afraid to risk vocalizing them and due to developmental learning issues, was utterly unable to reduce them to writing effectively enough to be of any assistance to my attorney. Moreover, this inability to communicate, I found it extremely difficult to pay attention to what was going on while trying to utilize pen and paper, as directed by the court, to convey my thoughts with counsel.

4. Notably, at several points during trial, I noticed Ms. Phily making loud noises, even at times dropping the listening device. Inevitably, when this would occur, the prosecution would call for a recess. The state claimed this was to check on Ms. Phily's well-being, however, these checks most often took place privately outside the courtroom. I also noticed that these interruptions would almost always occur, either while or directly after my attorney and I would make remarks to each other.

5. I included several portions of the trial record, at Appendix(s) C through G, where I remember Ms. Phily's distractions leading to recesses being requested by the state.

6. It was pretty clear to me there was a sharing of information going on between Ms. Phily and the state. As a result of my inability to privately confer with counsel during my trial, I noticed both myself and my attorney missed a lot.

7. There were other parties in the courtroom during trial who would be able to verify these occurrences during the trial. During an evidentiary hearing, counsel would be able to, with the assistance of discovery tools, be able to locate and secure the testimony to further support my claim. I have attached what I could locate on my own with my extremely limited resources.

The foregoing statement are based on my personal observations during trial and are both true and accurate to the best of my knowledge and belief.

Dated this 30th day of December, 2018.

Marcus Read
D.O.C. 302876/CH02
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

Appendix C

1 A. Yes, it is.

2 MR. WILLIAMS: Your Honor, at this point I
3 would offer Exhibit 12.

4 THE COURT: Ms. Ko.

5 MS. KO: No, objection.

6 THE COURT: Mr. Underwood.

7 MR. UNDERWOOD: No objection.

8 THE COURT: Exhibit 12 will be admitted.

9 (Exhibit No. 12 admitted.)

10 THE COURT: Counsel, I think we are going to
11 take our noon recess now.

12 MR. WILLIAMS: Thank you, Your Honor.

13 THE COURT: All right. Ms. Ryan, you may step
14 down and return at 1:30.

15 Ladies and gentlemen of the jury, we are going
16 to take our noon recess now. What I would like you to do
17 is head on back to the jury room where Ms. Wood will give
18 you further instruction. Please remember that you do not
19 have the case yet. Do not discuss any issue of the case
20 with each other, or with anyone else. Okay. Thanks. We
21 will be at recess, folks.

22 (Court at recess.)

23

24

25

1 AFTERNOON SESSION

2 OCTOBER 15, 2015

3
4 (The following proceedings were held
5 outside the presence of the jury.)

6 THE COURT: Good afternoon. Counsel, I just
7 wanted to let you know that I guess Ms. Phily is using a
8 hearing device. You should be aware of that, because when
9 that device is turned on, it picks up conversations in the
10 courtroom. If there needs to be conversations between you
11 and your client, and you want the hearing device silenced
12 for some reason, you need to alert the Court of that.
13 Okay.

14 MS. KO: Your Honor, I'm not understanding.
15 Before I talk to my client, I have to ask for the Court's
16 permission?


17 THE COURT: No, that's not what I'm saying at
18 all. What I'm saying is you have to be circumspect of
19 what you are talking about in here because the hearing
20 devices that are used in the courtroom pick up
21 conversations that a person normally wouldn't be able to
22 hear. So even my whispered conversation with my Judicial
23 Assistant can be picked up by the hearing device.

24 MS. KO: Well, my concern is that
25 conversations that I have with my client, which I need to

1. do because he needs to assist me during this trial, that
2 those conversations may be overheard by the victim's
3 mother who is seated in the gallery, and I think it
4 interferes with my ability to represent my client if I
5 have to worry about whether or not my conversations are
6 being overheard.

7 THE COURT: So, here is the thing, Ms. Ko, it
8 is an open and public courtroom. The Court is also
9 required to make reasonable accommodations to anyone with
10 a disability, and in this instance that includes a hearing
11 assisted device. What I'm telling you is that the hearing
12 assisted devices that are utilized, and I recall this from
13 when I was practicing on the defense side, is it can pick
14 up conversations that otherwise a normal hearing person
15 would not be able to given the distance, so what I'm
16 suggesting to the both of you, both to you and
17 Mr. Underwood is that you be circumspect in those
18 conversations, do them in writing or whatever, if there
19 needs to be something of importance said, you merely need
20 to report the Court. If it takes that we have to take a
21 break so you can have a conversation with your client,
22 then I will do so. I just want to make you aware of that.
23 Okay.

24 MS. KO: And I also would like to place on the
25 record that I too am aware of how sensitive these

1 listening devices are. I have had cases in the past where
2 I have come to learn that jurors were able to pick up
3 conversations from the jury room with the door closed,
4 conversations that were occurring in the courtroom. And
5  so, again, I do want to place on the record that I believe
6 that not being able to communicate freely with my client
7 because I'm concerned about the victim's mother
8 overhearing our conversations, I believe that it
9 interferes with my ability to assist my client. I wanted
10 to place that on the record.

11 THE COURT: Thank you, and I understand what
12 your concern is. That certainly is my concern. I share
13 your concern. Normally what we do is when we go on break,
14 or whatever, Ms. Wood will turn off the device so it does
15 not pick up any conversations. What I'm indicating to you
16 is the accommodation I think that must be made is those
17 communications while we are in session must be in writing,
18 unless there is something that you need to talk about
19 vocally with either of your clients, you merely need to
20 let the Court know that you want to take a break and the
21 the Court will accommodate you in doing so. All right.

22 MR. WILLIAMS: Can I just interject for a
23 second. I hate the way this is sounding on paper, or it
24 would sound on paper. Am I to understand that that over
25 there near Mr. Underwood is the microphone, or receiver,

1 that we are talking about?

2 THE COURT: Yes.

3 MR. WILLIAMS: Is there any reason that
4 it's -- I mean, it's five, ten feet away from the defense
5 table. Is there any reason that it couldn't be moved
6 closer to the witness stand?

7 THE JUDICIAL ASSISTANT: Because the batteries
8 were not charged in it, and I had to put new chargeable
9 batteries in it.

10 MR. WILLIAMS: So it's connected to an outlet?

11 THE COURT: So it's plugged in down through on
12 the floor.

13 MR. WILLIAMS: We have an outlet here by the
14 witness stand, or we could find another outlet. There is
15 some over here. We can move it away from defense table.

16 MS. KO: I don't think that the location of
17 the receiver actually makes any difference.

18 THE COURT: It does to a certain degree, but
19 you are correct that they are extremely sensitive, and it
20 is just something that, from my own experience what I'm
21 telling you is I was conscious of it, and I want defense
22 counsel to be conscious of it. So we will plug it in over
23 here closer to the witness stand, but I don't think that
24 that -- you know, and see if it eliminates the problem.

25 MR. WILLIAMS: Again, focusing on the record

1 that's being made here, this is the same type of
2 technology we have been using for as long as I have been
3 practicing, and I haven't been practicing near as long as
4 anyone else here, but when jurors need listening devices,
5 we give them the same equipment, we have the same
6 receiver, and I have never encountered a situation where a
7 juror -- and I have had many of them -- has said I'm
8 overhearing when defense counsel is speaking with their
9 client. I don't know if that's different for defense
10 counsel, or Your Honor.

11 THE COURT: I bring the issue up because, and
12 I'm just letting everybody know, when I was in practice it
13 was an issue that I was conscious of, and so I alerted the
14 Court to it at all times, whether it was a juror or
15 somebody in the audience was using the hearing device,
16 that that was, that that could inhibit my communication
17 with my client, and I made the conscious effort to do
18 everything in writing. And I'm just telling counsel that
19 because the hearing device is being used, and I would tell
20 you this if it was a juror using the hearing device also,
21 that you must be circumspect in your conversations with
22 your client, and I will make every accommodation for
23 counsel and the defendants that is requested of me for
24 privacy while the hearing device is being used.

25 I'm not making a finding that Ms. Phily can

1 overhear anything at all. That has not been the
2 indication of the Court. I'm just telling everyone here
3 that it has been my experience, and so that's why I'm
4 letting counsel know.

5 MR. WILLIAMS: All I'm going to say is be
6 cautious because I have never had this come up where
7 someone said they overheard defense counsel speaking with
8 their client.

9 THE COURT: I'm just indicating to counsel and
10 the defendants they should be circumspect, and that's
11 simply based on my experience.

12 MR. WILLIAMS: I'm going to ask Ms. Phily if
13 she does begin to hear any type of communication to alert
14 us immediately so we can address it.

15 MS. KO: May I inquire when she received the
16 hearing device, because I was not aware that she had
17 received it until this afternoon. Did she have it this
18 morning?

19 THE COURT: No. I have never heard of anybody
20 ever having the hearing device in the jury room.

21 MR. WILLIAMS: So just for purposes of making
22 a record, we have the microphone here now on the witness
23 stand. I don't know, it's approximately 20 feet from
24 Ms. Ko, and maybe the same for Mr. Underwood. They may
25 disagree with my estimates, but I have also alerted

1 Ms. Philly that I have explained to her the importance that
2 counsel be able to confer with their clients in
3 confidence.

4 THE COURT: Thank you. Does anyone have
5 anything for the Court before we bring the jury out?

6 MS. KAVANAUGH: Yes, Your Honor. I wanted to
7 get some clarification. My understanding is last week
8 there was a hearing where she was present, and Your Honor
9 discussed Mr. Trujillo getting trial clothes for her.

10 THE COURT: Correct.

11 MS. KAVANAUGH: My understanding is that there
12 are trial clothes, but that she hasn't been dressed out.
13 Does Your Honor want her dressed out? I don't think that
14 the State has a preference on what she is wearing.
15 Mr. Trujillo is not here. I wasn't there for the hearing,
16 so I just want some clarification from you if your
17 expectation is that she be dressed when she comes.

18 THE COURT: It's my belief that every witness
19 who appears in this court, whether they are in prison or
20 not, has the right to have the dignity to put on civilian
21 clothes while they are testifying before a jury. And so,
22 yes, I would like that witness to be addressed out when
23 she does come to court.

24 MS. KAVANAUGH: Okay. Thank you.

25 MR. WILLIAMS: Clarification on that point.

Appendix D

1 during that time frame?

2 A. I think a week and a half.

3 Q. And where were you staying prior to that?

4 A. Other hotels.

5 Q. Do you remember what room number you were in at the Morgan
6 Motel?

7 A. Eight.

8 Q. Did Donald Phily work?

9 A. No.

10 Q. What did he do for money?

11 A. Sold drugs.

12 Q. Do you know what kind of drugs he sold?

13 A. Meth.

14 Q. During this time frame were you using any controlled
15 substances?

16 THE COURT: Excuse me just a minute.

17 Ms. Wood, can you check with the person in the gallery. I
18 think they are complaining about the hearing device.

19 MS. KO: Your Honor --

20 THE COURT: I'm about the take care of it. I
21 understand.

22 Ladies and gentlemen in the gallery, please
23 don't speak out loud during the testimony. Thank you.

24 Ms. Kavanaugh, you may continue.

25 ///

1 BY MS. KAVANAUGH:
2 Q. Were you using any controlled substances during this time
3 frame?
4 A. Yes.
5 Q. What were you using?
6 A. Heroin and meth.
7 Q. All right. Let's go back to the day before Donald Phily
8 was killed, the 28th of March. Do you remember that day?
9 A. Kind of.
10 Q. Do you remember if anybody came to visit you in your hotel
11 room that day?
12 A. Yeah.
13 Q. And who came to visit?
14 A. Damien.
15 Q. Was Donnie in the hotel room when Damien was there?
16 A. Yes. Yeah.
17 Q. Was there anything laid out in your hotel room?
18 A. Everything that belonged to us, basically.
19 Q. And what types of things were in the hotel room when
20 Damien came over?
21 A. I don't know, everything.
22 Q. Were there any electronics that were left out?
23 A. Yeah.
24 Q. And do you remember what was left out?
25 A. No, not specifically.

Appendix E

1 Q. What other things are you guys talking about?

2 A. Just that was it. He showed us a video of -- or let me
3 hear a video he had made with his phone, how it makes your
4 voice sound different.

5 THE COURT: We are going to excuse the jury
6 for just a moment. If you could accompany them into the
7 jury room, please, for a few minutes, folks.

8 (The following proceedings were held
9 outside the presence of the jury.)

10 THE COURT: Have a seat. Is there a problem
11 with the hearing device? Is there a problem with the
12 hearing device? You can hear okay?

13 UNIDENTIFIED MALE: Yeah.

14 THE COURT: The gentleman that is sitting up
15 here, you, sir, you can't use facial expressions with the
16 witness, and you can't make noises or talk out loud. Do
17 you understand? ~~I was watching you for the last~~

18 ~~five minutes~~ It's not necessary for you to nod or give
19 any type of expression while the witness is testifying.
20 Do you understand? Listen to what I'm telling you, you
21 are welcome to be here and I'm glad that you are here for
22 her support, but what I do not want is for you to be
23 embroiled in any way in her testimony. Do we understand
24 each other?

25 UNIDENTIFIED MALE: Yes.

1 THE COURT: All right. Let's get the jury
2 out, please. Thank you, counsel.

3 (The following proceedings were held
4 in the presence of the jury.)

5 THE COURT: Thank you, ladies and gentlemen.
6 Please be seated.

7 Mr. Williams.

8 BY MR. WILLIAMS:

9 Q. I thought I heard you, ma'am, to say that you believe that
10 you were there with Mr. Phily and Mr. McGlothlen for two
11 to three hours; is that right?

12 A. Right.

13 Q. And during that time you were talking, is the entire time
14 just small talk, just exchanging, just conversing?

15 A. Catching up because I hadn't seen him in like two weeks.

16 Q. And he showed you like a video?

17 A. It wasn't a video. It was showing how his phone would
18 change your voice. It's kind of hard to explain.

19 Q. And he had made some kind of recording or video with that?

20 A. He was rapping some kind of -- he made up a rap.

21 Q. Okay. And is that what is going on during this entire
22 time?

23 A. No.

24 Q. What else is going on?

25 A. Like I said, I'm talking about his daughter, outfits that

Appendix F

Appendix G

1 MS. KO: Yes.

2 THE COURT: Okay. The next one is Reopelle's
3 statement, "Daniel, what's Marcus' gang affiliation."

4 MR. UNDERWOOD: I think we are all in
5 agreement that all of the gang references --

6 THE COURT: So that's all the way into the
7 next page, am I right about that?

8 MR. UNDERWOOD: Yes.

9 THE COURT: Then that will be the order of the
10 Court as you folks have set forth in the bracketed
11 materials.

12 Anything in addition from any of the parties?

13 MR. UNDERWOOD: Not on this, Your Honor.

14 MR. WILLIAMS: Can we take a very brief break?

15 THE COURT: Sure, not a problem. So we are
16 going to finish with Ms. Evans, and then Detective
17 Reopelle?

18 MR. WILLIAMS: Yes.

19 THE COURT: How long do you need?

20 MR. WILLIAMS: Five minutes.

21 THE COURT: All right. We will be at recess.
22 (Court at recess.)

23 THE COURT: You may be seated. Are we ready
24 for the jury?

25 MR. UNDERWOOD: Yes, Your Honor.

1 seen that gun in his hands." Mr. Williams, Ms. Ko, you
2 folks are in agreement that this should be redacted?

3 MR. WILLIAMS: Yes.

4 THE COURT: Ms. Ko.

5 MS. KO: Yes.

6 THE COURT: Mr. Underwood.

7 MR. UNDERWOOD: Present sense impression and
8 Daniel Davis' state of mind.

9 THE COURT: Even the Tony Montana part?

10 MR. UNDERWOOD: We can excise Tony Montana.

11 THE COURT: I think this is an expression of
12 his opinion as to his character, and therefore, I don't
13 think it's admissible in any form, and therefore, I will
14 order it be redacted.

15 The next one I see is --

16 MR. WILLIAMS: Can I just interrupt for a
17 second?

18 THE COURT: Yes.

19 MR. WILLIAMS: Going back to that one, it's
20 not clear to me when Ms. Ko wanted the redaction to end.

21 MS. KO: Oh, the part where it says, "and once
22 I seen that gun in his hands I could -- I kept thinking I
23 could die," that part is fine.

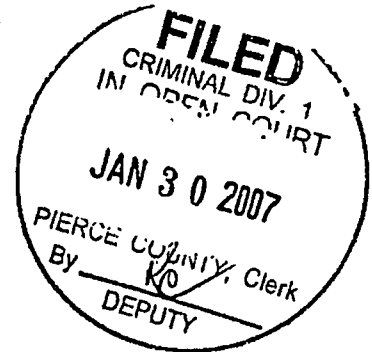
24 MR. WILLIAMS: So redact through, "He wants to
25 run the show."

Appendix H

Appendix I



06-1-03979-5 26884688 STTDFG 01-30-07



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

JAN 30 2007

STATE OF WASHINGTON,

Plaintiff,

vs.

CAUSE NO. 06-1-03979-5STATEMENT OF DEFENDANT ON
PLEA OF GUILTYMarcus A Reed

Defendant.

1. My true name is: Marcus Anthony Reed
2. My age is: 18
3. I went through the 12th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

- (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is

Dani S Shaw

- (b) I am charged with the crime(s) of:

Count I: Robbery in Second Degree

The elements are: In Pierce County on August 17 2006,
defendant took personal property from J.
Henderson and defendant threatened to use im-
mediate force or violence to illegally obtain such
property.

This crime carries a maximum sentence of 10 years imprisonment and a
\$ 20,000 fine. The standard range is from 12 months to 14
months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense ☐ Serious Violent ☐ Violent ☒
Non-Violent ☐ Sex ☐ Drug ☐ Traffic ☐ Check all that apply.

Count II: _____

Elements: _____

This crime carries a maximum sentence of _____ years imprisonment and a \$_____ fine. The standard range is from _____ months to _____ months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[] Serious Violent[] Violent[] Non-Violent[] Sex[] Drug[] Traffic[] (check all that apply)

(c) _____ Additional counts are addressed in Attachment "B".

5.

I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as speedy trial challenges and suppression issues.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
1	12-14 mos	N/A	12-14 mos	18-36 mos	10 yrs
2					12-14 mos

_____ Additional counts are addressed in Attachment "B".

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 2

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) **For Crimes Committed Prior to July 1, 2000:**
In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is less than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. If this crime is a sex offense, the court will order me to serve at least three years of community custody. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For Crimes Committed On or After July 1, 2000:

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is less than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the

longest term of community custody. If I have been convicted of a crime that is not listed in the chart and my sentence is more than 12 months, I will be placed on community custody for the period of earned release.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Sex Offenses (Not sentenced under RCW 9.94A.120(8))	36 to 48 months or up to the period of earned release, whichever is longer
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer
Crimes Against Persons as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

- (g) The prosecuting attorney will make the following recommendation to the judge: 12 months, 1 day
credia for 24 days served concurrent with
#06-1-04937-5: \$500 = Crime Victim \$200 costs \$100 =
DNA draw community custody (P), 400 Atty fee,
restriction #32.57 to Domestic P 12-24
- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range of actual confinement and community custody unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range of actual confinement and community custody, either the State or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (i) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 4

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

(k)

This offense is a most serious offense, or strike, as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence, and I have at least one prior conviction for one of these listed crimes in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

- (l) The judge may sentence me as a first-time offender instead of giving me a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or two years of community custody of the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.

- (m) The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

- (n) Because this crime involves a sex offense or a kidnapping offense involving a minor, I will be required to register where I reside, study, or work. The specific current registration requirements are set forth in Attachment "A". These requirements may change at a later date. I will be responsible for learning about any changes in the registration requirements and for complying with the registration requirements.

- (o) ~~If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purpose of DNA identification analysis.~~ #100—

- (p) If this is a crime of domestic violence and if I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 5

- (q) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. *WAL*
- (r) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph (e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions. *WAL*
- (s) If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- (t) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii). *WAL*
- (u) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge. *WAL*
- (v) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8). *WAL*
- (w) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(k). *WAL*
- (x) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. *WAL*
- (y) I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements. *WAL*
- (z) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The *WAL*

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 6

sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

(aa) This plea of guilty will result in the suspension of public assistance. RCW 74.08.290.

7. I plead guilty to count I in the amended Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

In Pierce County, on August 17, 2006, I took personal property from a pizza delivery man J. Henderson by the threat of using immediate force or violence against him. I plead guilty to Robbery in the second degree.

[] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

[Signature]
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

D S Shaw
Defendant's Lawyer
WSBA # 13994

Approved for entry:

[Signature]
Prosecuting Attorney
WSBA # 21213

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 7

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check the appropriate box]:

- (a) ☐ The defendant had previously read the entire statement above and the defendant understood it in full; or
- (b) ☐ the defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- * (c) ☐ An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 30 day of Jan, 2007.

Stephanie A. Arend
Judge

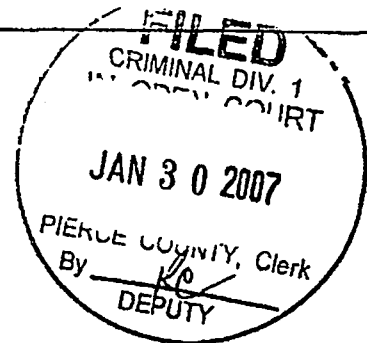
STEPHANIE A. AREND

***INTERPRETER'S DECLARATION**

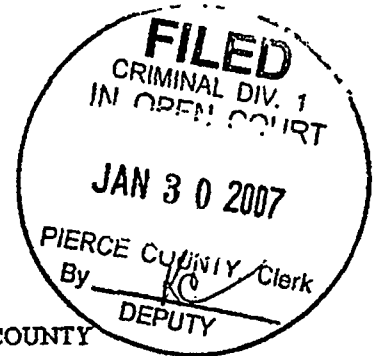
I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated _____ for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, _____.

Interpreter



06-1-03979-5



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-03979-5

vs.

MARCUS ANTHONY REED

Defendant.

SID: WA22818119

DOB: 06/21/1988

JUDGMENT AND SENTENCE (FJS)

☒ Prison [] RCW 9.94A.712 Prison Confinement

[] Jail One Year or Less

[] First-Time Offender

[] SSOSA

[] DOSA

[] Breaking The Cycle (BTC)

[] Clerk's Action Required, para 4.5 (DOSA),
4.15.2, 5.3, 5.6 and 5.8

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 1-30-07
by [X] plea [] jury-verdict [] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ROBBERY IN THE SECOND DEGREE (AAA5)	9A.56.190 9A.56.210	NONE	08/17/2006	062290653

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520,
(JP) Juvenile present, (SM) Sexual Motivation, See RCW 9.94A.533(8).

as charged in the Amended Information

- [] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

07-9-01252-5

06-1-03979-5

☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	ROB 1	Current	Pierce Co.	10/11/06	A	NV

☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	2	IV	12+-14 MOS.	NONE	12+-14 MOS.	10 YRS.

2.4 ☐ EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence ☐ above ☐ below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 LEGAL FINANCIAL OBLIGATIONS. The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

☐ The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 ☐ The court DISMISSES Counts _____ ☐ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

06-1-03979-5

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ _____ Restitution to: _____
 \$ _____ Restitution to: _____
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).
 PCV \$ 500.00 Crime Victim assessment
 DNA \$ ~~100.00~~ DNA Database Fee
 PUB \$ 200 Court-Appointed Attorney Fees and Defense Costs
 FRC \$ 200.00 Criminal Filing Fee
 FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____
 \$ _____ Other Costs for: _____
 \$ 900 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ 100.00 per month commencing per cld. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

☒ The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

☒ is scheduled for 2-27-07

☒ defendant waives any right to be present at any restitution hearing (defendant's initials): WPK

[] RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 COSTS ON APPEAL

06-1-03979-5

An award of costs on appeal against the defendant may be added to the total legal financial obligations RCW 10.73.

4.7 ☐ HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 ☒ DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with Dominic Pizzol (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

☐ Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

<u>Mental health course by</u>

4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>12⁺</u> months on Count	<u>I</u>	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____

Actual number of months of total confinement ordered is: 12 months + 1 day

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

☐ The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other

06-1-03979-5

deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 24 days

4.13 ☐ COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

☐ COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 18 to 36 Months;

Count _____ for a range from: _____ to _____ Months;

Count _____ for a range from: _____ to _____ Months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

PROVIDED: That under no circumstances shall the combined term of confinement and term of community custody actually served exceed the statutory maximum for each offense

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☒ Defendant shall have no contact with: Pomeroz Bzza

06-1-03979-5

☐ Defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to wit:

☐ The defendant shall participate in the following crime-related treatment or counseling services: _____

☐ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse

☐ mental health ☐ anger management and fully comply with all recommended treatment.

☐ The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

4.14 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.13.

4.15 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

06-1-03979-5

5.8 OTHER: _____

DONE in Open Court and in the presence of the defendant this date 1/30/07

JUDGE

Print name

Stephanie A. Arend
STEPHANIE A. AREND

Attorney for Defendant

Print name:

WSB #

Deputy Prosecuting Attorney

Print name:

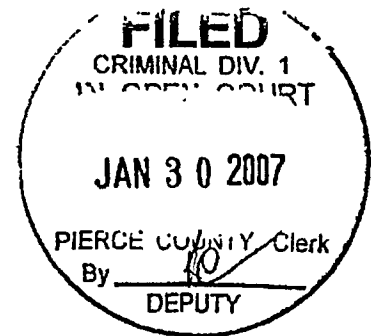
WSB #

Defendant

Print name:

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature:



06-1-03979-5

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 06-1-03979-5

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

Court Reporter

JAN-MARIE GLAZE

06-1-03979-5

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- _____ sex offense
- _____ serious violent offense
- _____ assault in the second degree
- _____ any crime where the defendant or an accomplice was armed with a deadly weapon
- _____ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- _____ (I) The offender shall remain within, or outside of, a specified geographical boundary: _____
- _____ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____
- _____ (III) The offender shall participate in crime-related treatment or counseling services;
- _____ (IV) The offender shall not consume alcohol; _____
- _____ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or
- _____ (VI) The offender shall comply with any crime-related prohibitions.
- V (VII) Other: mental health counseling

06-1-03979-5

IDENTIFICATION OF DEFENDANT

SID No. WA22818119
(If no SID take fingerprint card for State Patrol)

Date of Birth 06/21/1988

FBI No. 235956JC3

Local ID No. UNKNOWN

PCN No. 538860212

Other

Alias name, SSN, DOB: MARKUS ANTHONY REED

Race:		Ethnicity:		Sex:	
<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African-American	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male	
<input type="checkbox"/> Native American	<input type="checkbox"/> Other: :	<input type="checkbox"/> Non-Hispanic		<input type="checkbox"/> Female	

FINGERPRINTS

Left four fingers taken simultaneously



Left Thumb



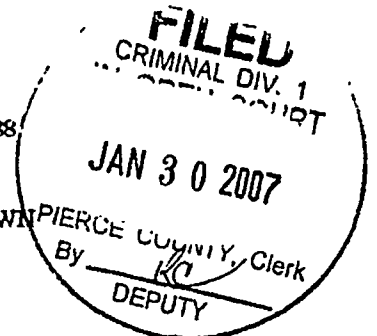
Right Thumb

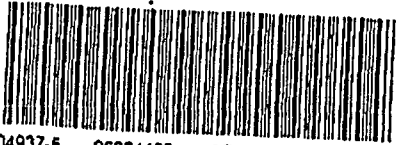


Right four fingers taken simultaneously

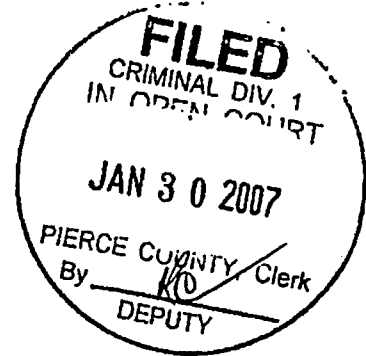


I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Kathy Chyle Dated: 1/30/07

DEFENDANT'S SIGNATURE: X [Signature]DEFENDANT'S ADDRESS: DOC



06-1-04937-5 26884428 STTDFG 01-30-07



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON JAN 30 2007
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

CAUSE NO. 06-1-04937-5Marcus A. Reed

Defendant.

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY

1. My true name is: Marcus Anthony Reed
2. My age is: 18
3. I went through the 12th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is

David S Shaw

(b) I am charged with the crime(s) of:

Count I: Robbery in the First Degree

The elements are: In Pierce County, on October 11, 2006, defendant took personal property from Brian Evans and used force or violence against Mr Evans in order to obtain such property.

This crime carries a maximum sentence of Life years imprisonment and a \$ 50,000 fine. The standard range is from 41 months to 54 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense | | Serious Violent | | Violent ☒
 Non-Violent | | Sex | | Drug | | Traffic | | Check all that apply.

Count II: _____

Elements: _____

This crime carries a maximum sentence of _____ years imprisonment and a \$_____ fine. The standard range is from _____ months to _____ months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[] Serious Violent[] Violent[] Non-Violent[] Sex[] Drug[] Traffic[] (check all that apply)

(c) _____ Additional counts are addressed in Attachment "B".

5.

I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as speedy trial challenges and suppression issues.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
1	41-54 mos	N/A	41-54 mos	18-36 mos	5150,000
2					

_____ Additional counts are addressed in Attachment "B".

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 2

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.
- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) **For Crimes Committed Prior to July 1, 2000:**

In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is less than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. If this crime is a sex offense, the court will order me to serve at least three years of community custody. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For Crimes Committed On or After July 1, 2000:

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is less than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the

longest term of community custody. If I have been convicted of a crime that is not listed in the chart and my sentence is more than 12 months, I will be placed on community custody for the period of earned release.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Sex Offenses (Not sentenced under RCW 9.94A.120(8))	36 to 48 months or up to the period of earned release, whichever is longer
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer
Crimes Against Persons as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

- (g) The prosecuting attorney will make the following recommendation to the judge: 41 months credit for 101 days served, \$500⁰⁰ Crime Victim Fund #200 costs, \$A#7 reimbursement, DNA draw, \$1500 mental health counseling concurrent with #06-1-03979-5, Restriction No contact with Brian & nos
- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range of actual confinement and community custody unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range of actual confinement and community custody, either the State or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.
- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 4

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

(k)

This offense is a most serious offense, or strike, as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence, and I have at least one prior conviction for one of these listed crimes in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

(l) The judge may sentence me as a first-time offender instead of giving me a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.

(m) The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, whichever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

(n) Because this crime involves a sex offense or a kidnapping offense involving a minor, I will be required to register where I reside, study, or work. The specific current registration requirements are set forth in Attachment "A". These requirements may change at a later date. I will be responsible for learning about any changes in the registration requirements and for complying with the registration requirements.

(o)

If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purpose of DNA identification analysis. \$100 —

(p) If this is a crime of domestic violence and if I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 5

- (q) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus. *WPS*
- (r) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph (e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions. *WPS*
- (s) If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty. *WPS*
- (t) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of \$3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii). *WPS*
- (u) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge. *WPS*
- (v) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8). *WPS*
- (w) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(k). *WPS*
- (x) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. *WPS*
- (y) I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements. *WPS*
- (z) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The *WPS*

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 6

~~sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.~~

(aa) This plea of guilty will result in the suspension of public assistance. RCW 74.08.290.

7. I plead guilty to count I in the original Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

(11.) The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: In Pierce County on October 11, 2006, I took personal property from Brian P. ENOS and used violence against him in order to obtain such property. I plead guilty to Robbery in the first degree. WA

[] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

[Signature]
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

Approved for entry:

D S Shaw
Defendant's Lawyer
WSBA # 13994

[Signature]
Prosecuting Attorney
WSBA# 30131

STATEMENT OF DEFENDANT
ON PLEA OF GUILTY - 7

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check the appropriate box]:

- (a) ☐ The defendant had previously read the entire statement above and the defendant understood it in full; or
- (b) ☐ the defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or
- * (c) ☐ An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 30 day of Jan, 2007.

Judge

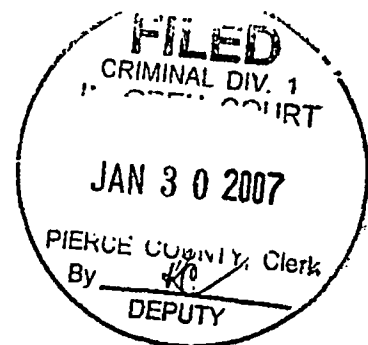
STEPHANIE A. AREND

***INTERPRETER'S DECLARATION**

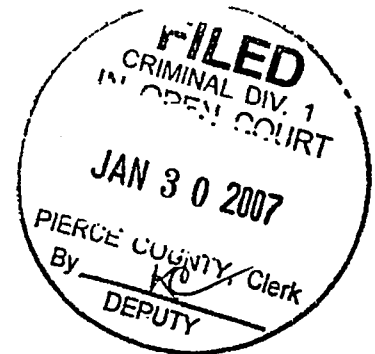
I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated _____ for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, _____.

Interpreter



06-1-04937-5



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

JAN 30 2007

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-1-04937-5

vs.

JUDGMENT AND SENTENCE (FJS)

MARCUS ANTHONY REED

Defendant.

☒ Prison [] RCW 9.94A.712 Prison Confinement
☐ Jail One Year or Less
☐ First-Time Offender
☐ SSOSA
☐ DOSA
☐ Breaking The Cycle (BTC)
☐ Clerk's Action Required, para 4.5 (DOSAs),
 4.15.2, 5.3, 5.6 and 5.8

SID: WA22818119
 DOB: 06/21/1988

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on 1-30-07
 by [X] plea [] jury-verdict [] bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO.
I	ROBBERY IN THE FIRST DEGREE (AAA4)	9A.56.190 9A.56.200(1)(iii)	NONE	10/11/06	062840967

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, See RCW 9.94A.533(8).

as charged in the Original Information

- [] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

07-9-01250-9

06-1-04937-5

☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	ROB 2	Current	Pierce Co.	08/17/06	A	NV

☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	2	IX	41-54 MOS.	NONE	41-54 MOS.	LIFE

2.4 ☐ **EXCEPTIONAL SENTENCE.** Substantial and compelling reasons exist which justify an exceptional sentence ☐ above ☐ below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 **LEGAL FINANCIAL OBLIGATIONS.** The judgment shall upon entry be collectable by civil means, subject to applicable exemptions set forth in Title 6, RCW. Chapter 379, Section 22, Laws of 2003.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

☐ The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate:

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows:

III. JUDGMENT

3.1 The defendant is **GUILTY** of the Counts and Charges listed in Paragraph 2.1.

3.2 ☐ The court **DISMISSES** Counts _____ ☐ The defendant is found **NOT GUILTY** of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

06-1-04937-3

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ _____ Restitution to: _____
 \$ _____ Restitution to: _____
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office).
 PCV \$ 500.00 Crime Victim assessment
 DNA \$ 100.00 DNA Database Fee
 PUB \$ 200 Court-Appointed Attorney Fees and Defense Costs
 FRC \$ 200.00 Criminal Filing Fee
 FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____
 \$ _____ Other Costs for: _____
 \$ 1000 TOTAL

[X] All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ PERICO per month commencing PERICO. RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

4.2 RESTITUTION

☒ The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

[] shall be set by the prosecutor.

☒ is scheduled for 2-27-07

☒ defendant waives any right to be present at any restitution hearing (defendant's initials): WJLR

[] RESTITUTION. Order Attached

4.3 COSTS OF INCARCERATION

[] In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

4.4 COLLECTION COSTS

The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500.

4.5 INTEREST

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

4.6 COSTS ON APPEAL

06-1-04937-5

An award of costs on appeal against the defendant may be added to the total legal financial obligations RCW. 10.73.

4.7 ☐ HIV TESTING

The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340.

4.8 ☒ DNA TESTING

The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

4.9 NO CONTACT

The defendant shall not have contact with BRUNNEN 7-14-87 (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 5 years (not to exceed the maximum statutory sentence).

☐ Domestic Violence Protection Order or Antiharassment Order is filed with this Judgment and Sentence.

4.10 OTHER:

<u>mental health counseling</u>

4.11 BOND IS HEREBY EXONERATED

4.12 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT. RCW 9.94A.589. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC):

<u>41</u> months on Count	<u>I</u>	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____
_____ months on Count	_____	_____ months on Count	_____

Actual number of months of total confinement ordered is: 41 months

(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

☐ The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589. All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other

06-1-04937-5

deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively to all felony sentences in other cause numbers prior to the commission of the crime(s) being sentenced. _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 101 days

4.13 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

[] COMMUNITY CUSTODY is ordered as follows:

Count I for a range from: 18 to 30 Months;

Count _____ for a range from: _____ to _____ Months;

Count _____ for a range from: _____ to _____ Months;

or for the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A for community placement offenses -- serious violent offense, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offense. Community custody follows a term for a sex offense -- RCW 9.94A. Use paragraph 4.7 to impose community custody following work ethic camp.]

PROVIDED: That under no circumstances shall the combined term of confinement and term of community custody actually served exceed the statutory maximum for each offense

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community service; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; and (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

[] The defendant shall not consume any alcohol.

[] Defendant shall have no contact with: Brian Enos 777-19-87

06-1-04937-5

☐ Defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to wit:

☐ The defendant shall participate in the following crime-related treatment or counseling services: _____

☐ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse

☐ mental health ☐ anger management and fully comply with all recommended treatment.

☐ The defendant shall comply with the following crime-related prohibitions: _____

Other conditions may be imposed by the court or DOC during community custody, or are set forth here: _____

4.14 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.13.

4.15 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

06-1-04937-5

V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505.
- 5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.7602.
- 5.4 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.
- 5.5 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047.
- 5.6 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200. N/A
- 5.7 **RESTITUTION AMENDMENTS.** The portion of the sentence regarding restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime.

06-1-04937-5

5.8 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 1/30/07

JUDGE

Print name

STEPHANIE A. AREND

Deputy Prosecuting Attorney

Print name:

WSB #

Attorney for Defendant

Print name:

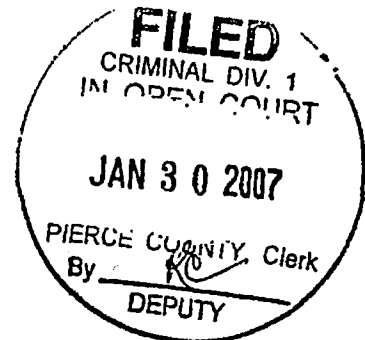
WSB #

Defendant

Print name:

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.

Defendant's signature:



06-1-04937-5

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 06-1-04937-5

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTER

JAN-MARIE GLAZE
Court Reporter

06-1-04937-5

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- ☐ sex offense
- ☐ serious violent offense
- ☐ assault in the second degree
- ☐ any crime where the defendant or an accomplice was armed with a deadly weapon
- ☐ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed:

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions:

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC:

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

☐ (I) The offender shall remain within, or outside of, a specified geographical boundary: _____

☐ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: _____

☐ (III) The offender shall participate in crime-related treatment or counseling services;

☐ (IV) The offender shall not consume alcohol; _____

☐ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

☐ (VI) The offender shall comply with any crime-related prohibitions

☐ (VII) Other: mental health counseling

06-1-04937-5

IDENTIFICATION OF DEFENDANT

SID No. WA22818119
(If no SID take fingerprint card for State Patrol)

Date of Birth 06/21/1988

FBI No. 235956JC3

Local ID No. UNKNOWN

PCN No. 538916935

Other

Alias name, SSN, DOB: MARKUS ANTHONY REED

Race:		Ethnicity:		Sex:	
<input type="checkbox"/> Asian/Pacific Islander	<input checked="" type="checkbox"/> Black/African- American	<input type="checkbox"/> Caucasian	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Male	
<input type="checkbox"/> Native American	<input type="checkbox"/> Other: :	<input checked="" type="checkbox"/> Non- Hispanic	<input type="checkbox"/> Female		

FINGERPRINTS

Left four fingers taken simultaneously



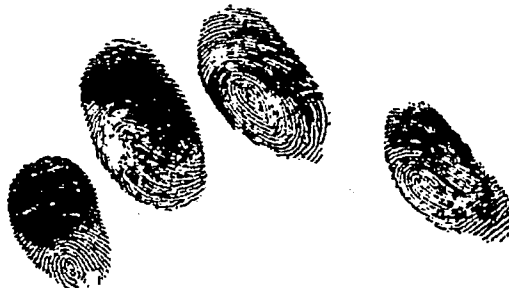
Left Thumb



Right Thumb



Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto. Clerk of the Court, Deputy Clerk, Kathy Clyde Dated: 1/30/07

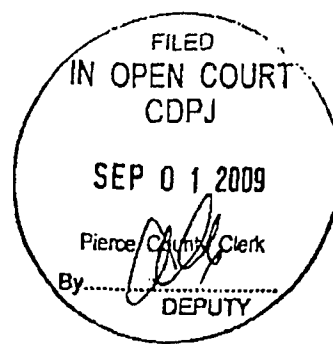
DEFENDANT'S SIGNATURE: XDEFENDANT'S ADDRESS: DOC

Sent from my iPhone

Case Number: 09-1-02777-5 Date: April 9, 2013
 SerialID: F07DCC48-F20F-6452-DFAD0D4CFE2FEE7E
 Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



09-1-02777-5 32750251 STTDFG 09-01-09



**Superior Court of Washington
 For Pierce County**

State of Washington

Plaintiff

vs.

Marcus Anthony Reed
 Defendant

No. 09-1-02777-5

Statement of Defendant on Plea of
 Guilty to Non-Sex Offense
 (STTDFG)

SEP 01 2009

1. My true name is: Marcus Anthony Reed
2. My age is: 21
3. The last level of education I completed was 12 +
4. I Have Been Informed and Fully Understand That:
 - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is: David S Shaw #13994
 - (b) I am charged with the crime(s) of:
 Count I: Robbery in Second Degree
 The elements are: In Pierce County, WA, on June 2nd 2009 defendant took personal property from C. Fagot, the owner against C. Fagot's will by use or threatened use of force (immediate) violence or fear of injury to C. Fagot, said force or fear used to ~~commit~~ obtain the property,
 The elements are: _____

Statement on Plea of Guilty (Non-Sex Offense) (STTDFG) - Page 1 of 9
 CrR 4.2(g) (7/2007)

(c) Additional counts are addressed in Attachment "B"

5. **I Understand I Have the Following Important Rights, and I Give Them All Up by Pleading Guilty:**

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to hear and question the witnesses who testify against me;
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

6. **In Considering the Consequences of my Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f).)	MAXIMUM TERM AND FINE
1	5	22-29 mos	N/A	22-29 mos	18-36 mos	10 yrs / \$20,000
2						

*(F) Firearm, (D) other deadly weapon, (V) VUCSA in protected zone, See RCW 9.94A.633(6), (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, See RCW 9.94A.605

- (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- (c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the offender score, I

Case Number: 09-1-02777-5 Date: April 9, 2013
 SerialID: F07DCC48-F20F-6452-DFAD0D4CFE2FEE7E
 Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

- (d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- (e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) For crimes committed prior to July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is not more than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the longest term of community custody.

Case Number: 09-1-02777-5 Date: April 9, 2013
 SerialID: F07DCC48-F20F-6452-DFAD0D4CFE2FEE7E
 Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer.
* Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer.
Crimes Against Persons as defined by RCW 9.94A.411(2)	9 to 18 months or up to the period of earned release, whichever is longer.
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9.94A.660)	9 to 12 months or up to the period of earned release, whichever is longer.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I have not completed my maximum term of total confinement and I am subject to a third violation hearing and the Department of Corrections finds that I committed the violation, the Department of Corrections may return me to a state correctional facility to serve up to the remaining portion of my sentence.

- (g) The prosecuting attorney will make the following recommendation to the judge: *29 months, credit for 83 days served, \$500.00 fine, victim \$400.00 Attorney fees of \$200.00 costs \$100.00 DNH, restitution by later order, no contact with victim, 18-36 mos. community custody range.*

☐ The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless there is a finding of substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:
- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
 - (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
 - (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
 - (iv) The judge may also impose an exceptional sentence above the standard range if

Case Number: 09-1-02777-5 Date: April 9, 2013
 SerialID: F07DCC48-F20F-6452-DFAD0D4CFE2FEE7E
 Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

I understand that if a standard range sentence is imposed upon an agreed offender score, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a contested hearing, either the State or I can appeal the sentence.

- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.
- (j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9A.04.040.
- (k) I understand that I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.
- (l) Public assistance will be suspended during any period of imprisonment.
- (m) I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. For offenses committed on or after July 1, 2002, I will be required to pay a \$100.00 DNA collection fee, unless the court finds that imposing the fee will cause me undue hardship.

Notification Relating to Specific Crimes. If Any of the Following Paragraphs Do Not Apply, They Should Be Stricken and Initialed by the Defendant and the Judge.

- (n) This offense is a most serious offense or strike as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
- (o) The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or up to two years of community custody if the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training. *lak*
- (p) If this crime involves a kidnapping offense involving a minor, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for *lak*

Statement on Plea of Guilty (Non-Sex Offense) (STTDFG) - Page 5 of 9
 CrR 4.2(g) (7/2007)

complying with the new requirements. *NAR*

(q) If this is a crime of domestic violence, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150. *NAR*

(r) If this crime involves prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus. *NAR*

(s) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660. Even if I qualify, the judge may order that I be examined by a licensed or certified treatment provider before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative. If the judge imposes the prison-based alternative, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of at least one-half of the midpoint of the standard range. *NAR*

If the judge imposes the residential chemical dependency treatment-based alternative, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of *three to six months*, as set by the court. As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.715. *NAR*

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(f). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if any violations of the conditions of the sentence have occurred. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within *NAR*

the standard range. *KLAR*

up to court (t) If I am subject to community custody and the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

(u) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, a mandatory methamphetamine clean-up fine of \$3,000 will be assessed. RCW 69.50.401(2)(b). *KLAR*

(v) If this crime involves a violation of the state drug laws, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a. *KLAR*

(w) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. *KLAR*

(x) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.503, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(13). *KLAR*

(y) If I am pleading guilty to felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements. *KLAR*

(z) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n]. *KLAR*

(aa) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise. *KLAR*

(bb) I understand that the offense(s) I am pleading guilty to include a Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions. *KLAR*

(cc) I understand that the offense(s) I am pleading guilty to include a deadly weapon or *KLAR*

~~firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.~~

(dd) I understand that the offenses I am pleading guilty to ~~include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm.~~ The sentences imposed for these crimes shall be served consecutively to each other. A consecutive sentence will also be imposed for each firearm unlawfully possessed.

(ee) I understand that if I am pleading guilty to the crime of ~~unlawful practices in obtaining assistance as defined in RCW 74.08.331,~~ no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.

(ff) The judge may ~~authorize work ethic camp.~~ To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I can not currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I can not have a current or prior conviction for a sex or violent offense. RCW 9.94A.690

7. I plead guilty to count(s) I in the Am Information. I have received a copy of that information.
8. I make this plea freely and voluntarily.
9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.
11. The judge has asked me to state what I did in my own words that makes me guilty of this crime.

This is my statement: In Pierce County, WA, on June 2nd, 2009, I took personal property from C. Fagot by use of the threat of immediate force or violence against him. I plead guilty to Robbery in the Second Degree.

[] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

STATE OF WASHINGTON, County of Pierce
ss: I, Kevin Stock, Clerk of the above
entitled Court, do hereby certify that this
foregoing instrument is a true and correct
copy of the original now on file in my office.
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of said Court this
09 day of April, 20 13
Kevin Stock, Clerk
By/s/Chris Hutton Deputy



Kevin Stock, Pierce County Clerk

By /s/Chris Hutton, Deputy.

Dated: Apr 9, 2013 1:30 PM



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: F07DCC48-F20F-6452-DFAD0D4CFE2FEE7E containing 9 pages
plus this sheet, is a true and correct copy of the original that is of record in my
office and that this image of the original has been transmitted pursuant to
statutory authority under RCW 5.52.050. In Testimony whereof, I have certified
and attached the Seal of said Court on this date.

Instructions to recipient: If you wish to verify the authenticity of the certified
document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: F07DCC48-F20F-6452-DFAD0D4CFE2FEE7E.

The copy associated with this number will be displayed by the Court.

000638